

75 Hawthorne Street
San Francisco, California 94105

*Proceeding under Section 309(a) of the Clean
Water Act, 33 U.S.C. § 1319(a)*

5. 40 C.F.R. § 122.26(b)(14)(ii) defines stormwater discharges associated with industrial activity to include boat building and repair classified under SIC Industry Group 373.

6. Pursuant to CWA § 402(p)(4), dischargers of stormwater associated with industrial activity are required to seek coverage under a promulgated general permit or seek individual permit coverage.

7. The State of California has an EPA-authorized NPDES program and issues permits, including industrial stormwater permits, through its State Water Resources Control Board (SWRCB) and nine Regional Water Quality Control Boards. On April 17, 1997, the State Water Board adopted General Permit No. CAS000001 for *Discharges of Stormwater Associated with Industrial Activities Excluding Construction Activities*, Water Quality Order No. 97-03-DWQ, which was in effect through June 30, 2015 and subsequently revised by the State Water Board on April 1, 2014, Water Quality Order No. 2014-0057-DWQ, which became effective on July 1, 2015, hereinafter, "General Permit."

III. FINDINGS OF FACT AND DETERMINATIONS OF LAW

8. Respondent is a corporation formed under the laws of the state of California and is a "person" within the meaning of CWA § 502(5), 33 U.S.C. § 1362(5).

9. At all times relevant to this action, Respondent has owned and operated the Basin Marine facility, located at 829 Harbor Island Drive in Newport Beach, California 92660 ("Facility"). At this location, Respondent is primarily engaged in repairing and building boats, properly categorized within SIC code 3732 (Boat Building and Repair).

10. Respondent has been engaged in boat repairs (i.e., boat haul outs, bottom painting, fiberglass repairs) at the Facility. Respondent's operations at the Facility fall within activities classified under SIC Code 3732, and is therefore an "industrial activity" for purposes of CWA § 402(p), 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(ii).

11. Stormwater runoff from the Facility discharges directly to Newport Bay via a pipe connected to an on-site catch basin. The pipe is a "point source" within the meaning of CWA § 502(14), 33 U.S.C. § 1362(14).

12. Stormwater runoff from the Facility is a "stormwater discharge associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(ii).

13. Stormwater discharges from the facility include paint, hydraulic fluid, oil and grease, epoxy resins, and copper, and therefore contain "pollutants," as defined by CWA § 502(6), 33 U.S.C. § 1362(6).

14. Discharges from the Facility enter Newport Bay which is connected to the Pacific Ocean. Newport Bay and the Pacific Ocean are "waters of the United States" within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7) and implementing regulations.

15. Respondent's discharge of pollutants in stormwater into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA § 502(12), 33 U.S.C. § 1362(12).

16. Respondent submitted its latest Notice of Intent to continue its coverage under the General Permit on April 24, 2015 (WDID 8 301019948).

17. The General Permit requires, inter alia,

- a. Part III of the General Permit prohibits the discharge of liquids or materials other than storm water to waters of the United States unless authorized by another NPDES permit;
- b. Part XI (B)(2) of the General Permit requires Respondent to collect and analyze storm water samples from two (2) Qualifying Storm Events (QSE) within the first half of the reporting year and two (2) QSEs within the second half of the reporting year;
- c. Part X (A) of the General Permit requires Respondent to develop and implement a Storm Water Pollution Prevention Plan ("SWPPP");
- d. Part X (H) (1)(a)(i) of the General Permit requires Respondent to clean and dispose of any identified debris, waste, spills, tracked materials or leaked materials.

18. On July 20, 2018, representatives of the EPA performed an inspection of the Facility to evaluate the Respondent's compliance with the requirements of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p); the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the General Permit. The EPA's inspection report was provided to Respondent on September 14, 2018 and is attached hereto as Exhibit 1.

19. As described in more detail in Exhibit 1, the EPA inspectors observed the following:

- a. Unaddressed leaks and spills of pollutants associated with boat painting, sanding and grinding;
- b. staining on the ground indicating leaks and spills of paint;
- c. accumulation of debris near the Facility's catch basin,
- d. no sampling data and non-stormwater discharges from boat wash operations.

20. The EPA received Respondent's response on October 11, 2018, which stated that all repairs had been completed. In addition, Respondent stated that there was no possibility of discharges, as the 5,000 gallon on-site treatment system captured all stormwater flow.

21. EPA returned to the Facility on February 14, 2019 to conduct a wet weather inspection. The EPA's inspection report was provided to Respondent on June 11, 2019 and is attached hereto as Exhibit 2.

22. As described in more detail in Exhibit 2, the EPA inspectors observed the following:

- a. Industrial stormwater actively discharging into Newport Bay, tanks completely full, and boat haul out areas flooded with storm water.

b. Stormwater samples taken by the State of California Inspectors exceeded the Numeric Action Limits (“NAL”) for both copper and zinc as outlined in the California Industrial General Permit. Newport Bay is on the CWA §303(d) list as impaired for Copper.

Parameter	NAL	Sample Result
Copper, Total	.0332 mg/L	3.86 mg/L
Zinc, Total	.26 mg/L	1.35 mg/L

23. The National Oceanic and Atmospheric Administration (“NOAA”) Newport Beach Harbor weather station recorded a 2.2-inch rain event for February 14, 2019. Between July 21, 2014 and July 21, 2019, the NOAA reports that at least 0.5 inches of rain fell on at least 20 days at the Newport Beach Harbor Weather Station. Therefore, between July 21, 2014 and July 21, 2019, on at least 20 days, stormwater associated with industrial activity discharged from the Facility to Newport Bay and the Pacific Ocean.

24. By discharging stormwater associated with industrial activity and failing to comply with the General Permit, Respondent has violated and continues to violate CWA §§ 301(a) and 402, 33 U.S.C. §§ 1311(a) and 1342.

IV. ORDER FOR COMPLIANCE ON CONSENT

25. Based on the foregoing Findings of Fact and Determinations of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), IT IS HEREBY ORDERED and AGREED that Respondent shall:

- a. Scrub and/or refinish the surface of the facility to remove the blue paint and other stains, such that these pollutants will not be mobilized in storm water, no later than October 1, 2019.
- b. Provide photos to demonstrate that spill kits are available near work areas no later than September 1, 2019.
- c. Clean out all catch basins and the conveyances that lead to the treatment system and properly dispose of any materials no later than October 1, 2019.
- d. Install appropriate Best Management Practices (“BMPs”) in and around the onsite catch basins and the onsite wastewater treatment system no later than September 1, 2019.
- e. Provide a written description of how the Facility manages potential non stormwater discharges during power washing activities so as to prevent any discharges, no later than October 1, 2019.
- f. Provide EPA with a schematic of the existing wastewater treatment system (i.e. components, total capacity, etc.) no later than September 1, 2019.
- g. Update the treatment system as necessary to handle the volume of runoff produced from an 85th percentile 24-hour storm event, as determined from historical rainfall records of the Newport Beach Harbor Rain Station, no later than October 1, 2019. See General Permit Part X.H.6.a.i. Design Storm Standards for Treatment Control BMPs.
- h. Provide copy of SWPPP as amended to reflect the above changes, no later than November 1, 2019.

V. FINAL REPORT AND TERMINATION OF THE AOC

26. Within thirty (30) calendar days after Respondent has fully completed and implemented the actions required by Section IV (Agreement on Consent) of this AOC, Respondent shall submit for the EPA's review and approval a final report (Final Report), including photographs, that includes a description and timeline of all of actions which have been taken toward achieving compliance with this AOC and the CWA.

27. If the EPA determines, after review of the Final Report, that all the requirements of this AOC have been completed and implemented in accordance with this AOC, the EPA will provide notice to Respondent and this AOC shall be deemed terminated.

28. If the EPA determines that any requirement has not been completed and implemented in accordance with this AOC, the EPA will notify Respondent, provide a list of deficiencies, and require Respondent to modify its actions as appropriate to correct such deficiencies. If so required, Respondent shall implement the modified requirement(s) and submit a modified Final Report.

VI. SUBMISSIONS AND RECORD RETENTION

29. Respondent shall submit all written communications, including progress reports, electronically. Respondent shall submit all required reports and plans to the EPA in an electronic format that allows them to be searchable by key word. Respondent shall send all submittals to the following e-mail addresses. Submissions will be deemed made on the date they are sent electronically.

Lawrence Torres
Water Section II (ENF-3-2)
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region 9
75 Hawthorne Street, San Francisco, CA 94105
Torres.Lawrence@epa.gov

Michelle R. Beckwith, Chief
Senior Environmental Scientist
Coastal Storm Water Unit
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

30. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of Respondent as specified by 40 C.F.R. § 122.22 and shall include the following statement:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed

to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

31. Respondent shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the performance of the tasks in this AOC, until five (5) years after termination of this AOC. Respondent shall also instruct its agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this AOC.

VII. MODIFICATION

32. Any request for modification by Respondent shall include the reason(s) for the request and a timeline for completion. Modification of this AOC shall be in writing and shall take effect only upon approval by the EPA. Failure by Respondent to implement any modified requirement(s) shall be a violation of this AOC.

VIII. GENERAL PROVISIONS

33. This AOC is binding on Respondent and its officials, officers, directors, partners, agents, employees, attorneys, successors and assigns, and on all persons, independent contractors, consultants and contractors acting in concert with Respondent.

34. Respondent shall provide a copy of this AOC to any successor in interest to its control, operation, or any other interest in any portion of its Facility at least thirty (30) calendar days prior to the transfer, and shall simultaneously notify the EPA in writing, via e-mail, that such notice has been given. Within fourteen (14) calendar days after the effective date of this AOC or the date of contracting, whichever is later, Respondent shall provide a copy of this AOC to all contractors and/or consultants to perform any of the work described in Section IV. Respondent shall condition the transfer of control, operation or any other interest in any portion of its Facility and any contract related to the performance of the work described in Section IV upon successful execution of this AOC.

35. This AOC is not and shall not be construed to be a permit under the CWA, nor shall it in any way relieve or affect Respondent’s obligations under the CWA, or any other applicable federal or state laws, regulations, and/or permits. Compliance with this AOC shall be no defense to any actions commenced pursuant to such applicable laws, regulations, or permits, nor does it constitute a release.

36. This AOC shall in no way affect the rights of the EPA or the United States against any person not a party hereto.

37. This AOC shall in no way limit or affect the EPA’s authority to obtain information, and to enter, inspect, sample or monitor compliance under any law, permit, court order or agreement.

38. The provisions of this AOC shall be severable. If any provision is declared by a court of competent jurisdiction to be unenforceable, then the remaining provisions shall remain in full force and effect.

39. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in Section III of this Order, except to the extent that those allegations provide the EPA with a jurisdictional basis to enforce this AOC.

40. Respondent consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) AOC. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

41. Failure to comply with the terms of this AOC may result in liability for statutory civil penalties under CWA Section 309(d), 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, a United States District Court may impose such penalties if the court determines that Respondent has violated the CWA as described above and failed to comply with the terms of this AOC. In determining the amount of any penalty, the court will consider the seriousness of the violations, the economic benefit (if any) resulting from the violations, any history that Respondent may have of such violations, any good faith efforts that Respondent has made to comply with legal requirements, the economic impact a penalty may have upon Respondent, and such other matters as justice may require.

42. Issuance of this AOC is not an election by the EPA to forego any remedies available to it under the law, including without limit any administrative, civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA. The EPA reserves all available legal and equitable rights and remedies to enforce any violations cited in this AOC, and the right to seek recovery of any costs and attorney fees incurred by the EPA in any actions against Respondent for non-compliance with this AOC.

43. In accordance with CWA § 309(a)(4), 33 U.S.C. § 1319(a)(4), the EPA will provide notice and a copy of this AOC to the State of California upon execution.

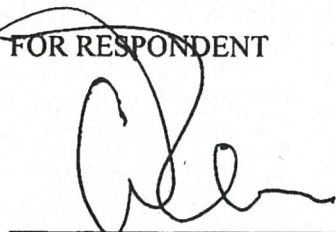
44. The undersigned signatory for Respondent certifies that he or she is authorized to execute this AOC and legally bind the Respondent.

IX. EFFECTIVE DATE

45. This AOC shall become effective on the date it is signed by the EPA.

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT

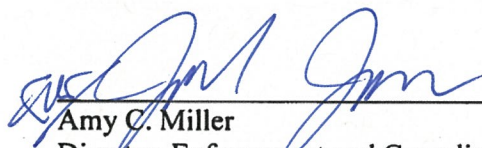


David L. New
President, Basin Marine, Inc.

7/19/19

Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9



Amy C. Miller
Director, Enforcement and Compliance Assurance Division

7/22/19

Date